

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HILDEBRANDO VARGAS,

Petitioner,

v.

R. M. DIAZ, Warden,

Respondent.

Case No. 13-cv-01584-JST (PR)

**ORDER TO SHOW CAUSE**

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee.

**BACKGROUND**

According to the petition, petitioner pleaded guilty, in Monterey County Superior Court, to two counts of lewd or lascivious acts on a person under the age of 14. (Docket No. 1 at 2.) Petitioner was sentenced to eight years in state prison. (Id.) Petitioner filed unsuccessful state habeas petitions in the Superior Court, California Court of Appeal, and the California Supreme Court. (Id. at 4-5.) The instant federal petition was filed on April 9, 2013.

**DISCUSSION**

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

1     B.     Claims

2             Petitioner seeks federal habeas corpus relief on the following grounds: (1) he received  
3     ineffective assistance of counsel; and (2) his offense did not fall within the applicable statute of  
4     limitations. Liberally construed, the claims appear arguably cognizable under § 2254 and merit an  
5     answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts  
6     must construe pro se petitions for writs of habeas corpus liberally).

7                             **CONCLUSION**

8             For the foregoing reasons and for good cause shown,

9             1.       The Clerk shall serve a copy of this order and the petition and all attachments  
10    thereto on respondent and respondent's attorney, the Attorney General of the State of California.  
11    The Clerk also shall serve a copy of this order on petitioner.

12            2.       Respondent shall file with the court and serve on petitioner, within 60 days of the  
13    issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
14    Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
15    Respondent shall file with the answer and serve on petitioner a copy of all portions of the state  
16    trial record that have been transcribed previously and that are relevant to a determination of the  
17    issues presented by the petition.

18            If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
19    court and serving it on respondent within 30 days of his receipt of the answer.


20            3.       Respondent may file a motion to dismiss on procedural grounds in lieu of an  
21    answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
22    2254 Cases. If respondent files such a motion, petitioner must serve and file an opposition or  
23    statement of non-opposition not more than 28 days after the motion is served and filed, and  
24    respondent must serve and file a reply to an opposition not more than 14 days after the opposition  
25    is served and filed.

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**IT IS SO ORDERED.**

  
JON S. TIGAR  
United States District Judge